

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

DONALD BURTON §
v. § CIVIL ACTION NO. 5:05cv144
PAUL KASTNER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Donald Burton, proceeding *pro se*, filed this civil action complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Burton complained that prison officials were not following their own regulations in denying him the right to participate in a drug treatment program. He said that as of the time of the filing of his lawsuit, he was waiting for the response to his BP-11 grievance, the final step in the Bureau of Prisons grievance procedure.

On September 21, 2005, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to exhaust administrative remedies. The Magistrate Judge observed that Burton acknowledged his failure to exhaust, in that he said that he filed his lawsuit prior to the completion of the grievance procedure. *See Underwood v. Wilson*, 151 F.3d 292, 296 (5th Cir. 1998). Burton received a copy of this Report on September 23, 2005, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and

adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to exhaust administrative remedies. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 10th day of November, 2005.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE